LEGISLATIVE
OVERSIGHT
COMMITTEE

TIFA

TRANSPORTATION
INFRASTRUCTURE
FINANCING
ALTERNATIVES

Agenda

November 12, 2002

1:30 Introductory Remarks
  Representative Fred Jarrett
  Senator Mary Margaret Haugen

1:40 Committee discussion from other States and Canada

2:15 Discussion of matrix of alternative financing ideas

3:30 Break

4:00 Next Steps for Study

5:00 Informal Discussions

BRITISH COLUMBIA PUBLIC-PRIVATE INTIATIVES
NEWSPAPER ARTICLES

The Province, Page A16, 03-Jun-2002
P3s could come to B.C. roads
By Keith Morgan

Build the road and the cars will come . . . .

Then sell off the new highway to the private sector: That's the route the B.C. Road Builders Association would like to see the provincial government take in its drive for public private partnerships -- P3s as they're known -- for new road construction.

"Traditional P3s that require somebody to design, build and then operate [a toll road] historically take several years to get to the construction stage but through the build-sell model the ministry of transportation can get things moving fairly quickly," claims Vashti Singh, the association's spokesman, reacting to the tabling of P3 enabling legislation in Victoria late last week.

Singh explains the build-sell model requires the government to raise the money and commission the project. But then it gets the investment back by selling it to a private-sector corporation to operate as a toll road. And she cites the example of Ontario's 108-kilometre 407 Express Toll Route, just north of Toronto, which swelled provincial coffers by $3.1 billion when it was sold a couple of years ago.

"The other advantage is that we get to use local companies to bid on the design and build portions, thus creating a lot of jobs. If we want to get the Olympics we can't afford to wait, we have to get moving."

There's been a lot of backroom talk recently about upgrading the Sea to Sky Highway for the Olympic bid as part of a P3 project. But as far as financing commuter highways by the build-sell method, TransLink chairman Doug McCallum is not so sure there is a suitable project candidate at the moment.

McCallums says: "The new Fraser crossing and south Fraser Perimeter Road
will be tolled but as to exactly how they will be financed has to be looked
at very carefully. Sometimes P3s work well but not in every case."

And the road builders may be pushing their digger uphill because their method still means the government is on the hook for the cash up front. And
there's no guarantee it could sell the highway once the blacktop is laid.

Vancouver Sun, Page E01, 01-Jun-2002
Minister names likely toll routes
By Harvey Enchin

A trip to Whistler may soon require more than nerves of steel and a tank of gas. You might need money to pay the toll.

Upgrading the fabled Sea-to-Sky Highway from Horseshoe Bay to Whistler is one of several projects the government may undertake through a public-private partnership (P3), Transportation Minister Judith Reid said Friday.

P3 projects generally require a revenue stream to make them worthwhile for a private-sector partner. And that usually means user fees.

Reid told a major conference on P3s Friday that the provincial government is also considering P3 deals to improve the Coquihalla Highway, Fraser River corridor routes and the Trans Canada Highway to the Alberta border.

The Sea-to-Sky Highway, the busiest two-lane highway in B.C. with 11 million trips a year, must be upgraded on time for the 2010 Olympics. "If we win the Olympic bid, we have to get on that one right away," Reid said.

She also described the repair of Highway 97 through the Okanagan Valley and restoration of northern and rural roads as urgent needs but didn't indicate whether those projects would be undertaken as P3s.

Over the next 10 years, Reid said, urgent transportation requirements amount to more than $10 billion worth of infrastructure investment. These include a rapid transit link from Vancouver International Airport to downtown Vancouver, connections to other gateways in the Lower Mainland (such as ports and border crossings) and safety and operational improvements throughout the province.

"Existing tax revenues are just not enough to meet these needs in light of other priorities for public service," Reid said.

Earlier this week, Reid introduced the transportation investment act to allow the province to make deals with private investors who would build,

D-4

operate and maintain highways and recover their costs by charging user fees.

The government would regulate the amount of tolls that private sector operators could charge. The legislation is part of the capital asset management framework introduced by Finance Minister Gary Collins on Thursday.

Reid said a policy paper, detailing plans the government intends to use to
push ahead with P3s, should be ready for public review by the end of June. A
conference is scheduled for July to give the policy a full airing. It will
be debated in the Legislature this fall.

The Coquihalla Highway is a toll road and contributed $42 million to government coffers in the fiscal year ended March 31, 2002. In this case,
the most likely P3 would be a long-term lease arrangement, leaving the private sector responsible for maintenance and improvements.

"We've got a study under way right now where we are taking a look at the
condition of that road, analyzing it to be able to define what we need, what's the work over the long term. There's huge investment we have in it,
but you have to maintain that. Would it be more efficiently delivered by the
private sector? We don't have the answer to that question."

Reid said her department is working on a P3 with TransLink -- the $3-billion
Fraser River crossing between Maple Ridge and Fort Langley -- and is assessing the public benefit of other proposals.

"While people would like us to move ahead quickly, we want successful projects so we have to take the time to be able to define the projects that
will achieve the most public good," Reid said.

The government is examining all major new investment projects to determine
if they have potential as successful P3 candidates. "In some places obviously they don't work," she said. "You have to have a business case to
make them work."

Times Colonist (Victoria), Page A03, 09-Jul-2002
Province examines private route for highways
By Judith Lavoie

B.C.'s transportation problems are looking like business opportunities to 250 international companies whose representatives are meeting in Vancouver this week.

A two-day conference, sponsored by the provincial government, is considering ways in which the private sector can profitably become involved in transportation infrastructure projects, which have traditionally been the responsibility of government.

The province has enthusiastically embraced the idea of public/private partnerships -- P3s -- as a way to fund pricey projects and provide services that citizens demand without raising taxes.

Last month, the government created Partnerships B.C. to promote and evaluate P3s and has set out the rules for projects under the Capital Asset Management Framework.

However, critics argue that P3s can result in lower levels of service, worse working conditions for employees and, ultimately, cost taxpayers more money.

Industry interest in P3s can be seen by attendance at the $1,000-a-seat transportation conference and other recent government-sponsored P3 forums.

Participants are representing companies from China, Japan, Mexico, Hong Kong, Spain, Italy, France, U.K., Australia and the U.S., said Transportation Minister Judith Reid.

Although certain projects such as the Coquihalla Highway, Sea to Sky Highway and another Fraser River crossing are being highlighted at the conference, government hasn't made any decisions on which direction to take, Reid said.

"As we look at some of these larger projects and how long it might take the government to finance them and whether they will be ready to meet the economic opportunity, the question is whether there is another way to do this," she said.

But, before government decides to move on any P3 project, it must be shown
that there are clear-cut benefits, she said.

The Island Highway and a fixed link from Vancouver Island to the mainland
are not up for discussion at the conference, but the government wants to
look at any innovative ideas, Reid said.

"It's very important for B.C.'s future that we have a broader pool of expertise."

B.C. Government and Service Employees' Union president George Heyman said
the conference is another example of the Liberal government discussing matters of vital public interest behind closed doors.

"We don't even know what we stand to lose. There's the risk of multinational
companies coming in and taking over the operation and design of our highways
and charging tolls," he said.

There are many studies of P3s which suggest they cost taxpayers more in the
long run. But, by the time the problems materialize, British Columbians will
have lost control over their public services and, under free trade, it will
be impossible to bring them back under public control, Heyman said.

"This government is just hell bent on turning over the operation of B.C. to
private companies and many of them are multinationals," he said.

INSTITUTIONAL ARRANGEMENTS						
NAME	**DESCRIPTION**	**REVENUE POTENTIALS**	**SOME ISSUES**	**Political Feasibility** **1= low** **5= high**	**Admin Feasibility** **1= hard** **5= easy**	**Public Acceptance** **1=less** **5= more**
63-20 Corporations	Public Private partnerships can be formed to issue tax exempt debt that can be used to develop major infrastructure projects	Private companies can obtain access to tax exempt debt for infrastructure construction. Amount of capital is constrained by revenue availability/ payment commitments. Title to facilities must be with state. Used for toll roads in California, Virginia, Mass. S.C. etc.	Is higher cost debt than G.O. Bonding.			
Regional Transportation Investment Districts (RTID)	Allows King Pierce and Snohomish to form district to raise revenues to fund capital improvements to highways, etc. Has authority to impose vehicle fees; parking tax, tolls, employee tax and local MVET up to .3%.	Net $544 million in "economically efficient" tolls (2014) I-405 Hot Lanes SR 167 Hot Lanes SR 520 SR 99 AWV SR 509 (More information Available Next Month)	What is an efficient way to debt finance the projects using a combination of federal, state, local and toll resources. Failure of Ref 51 as a funding source. Public Vote to be determined.			
State Toll Authority (State Transportation Commission)	WSDOT is authorized to identify toll projects that are approved by the legislature.	Limited to available revenues to repay debt service/operations	Revenue Bonds vs. GO/Gas Tax Backed Bonds Capacity to issue enough debt to pay for huge capital costs. How is Maintenance and Operations funded? How do you pay for the upfront costs to develop the project to construction?			

NAME	DESCRIPTION	REVENUE POTENTIALS	SOME ISSUES	Political Feasibility (1= low 5= high	Admin Feasibility 1= hard 5= easy	Public Acceptance 1=less 5= more
State Transportation Finance Authority (Housing, Economic Development Finance Authority, H.C. Facilities Authority)	Develops project financing using federal, state and local resources. Authorized to issue debt, to make loans to private companies, to receive money from private companies and make obligations to pay back. Has a portfolio of projects as identified by state, regional, local and private clients.	Depends on capitalization and revenue sources that are identified for project financing. Similar structures used in other states as the instrument to issue and repay debt (Colorado, California Texas)	Institutional arrangement-new agency? Capitalization of SIB's and other financing products. Non recourse debt—No obligation of the state can be made without Legislative authorization. Needs maximum flexibility to achieve most efficient debt structures for project financing.			
Transportation Pricing Utility (S.F. Area Bridge Toll Authority; New Jersey Turnpike Authority)	Ability to issue debt and to repay debt with tolls on a system of projects. Tolls are set to manage demand and to raise sufficient revenues to meet obligations.	Market pricing of demand may produce significant revenue. Revenue generated not specifically tied to project costs.	Jurisdiction How are revenues used? Application of new technology			
PPP—Allow private companies to finance, develop, construct and operate transportation facilities. (Virginia, Colorado, Delaware, B.C.)	Create opportunities for private investment that either earns or is guaranteed a profit, depending on financial structure.	Limited to projects where there is a dedicated revenue stream, such as toll projects, fees/fares or government funds and guarantees.	No obligations of the state so finance costs may be higher. The price of private sector risk will add to project costs.			

LENDING PROGRAMS						
NAME	**DESCRIPTION**	**REVENUE POTENTIAL**	**SOME ISSUES**	**Political Feasibility (1= low 5= high**	**Admin Feasibility 1= hard 5= easy**	**Public Acceptance 1=less 5= more**
Transportation Infrastructure Finance and Innovation Act (TIFIA)	Provides direct loans, loan guarantees and stand by lines of credit for projects that are over $100 million and have a revenue stream. Public or private project sponsors.	1/3 project costs may be provided under current TIFIA rules $3.1 Billion in TIFIA assistance for 10 projects with a total cost of $196 million.	Must be a Revenue generating project sufficient to repay senior debt and Feds.			
Section 129 Loans	Federal program that allows states to lend federal aid funds to projects that are repaid with a dedicated non-federal source (i.e. tolls, state taxes).	Unknown. TXDOT used a $125 million loan as part of a Turnpike Authority finance plan that enhanced the credit of revenue bonds.	Spending/committing scarce federal resources for presumably large project.			
State Infrastructure Bank	Allows states to create revolving fund accounts to provide loans, letters of credit, certificates of participation, credit backstops/collateral using state and federal funds.	Legislature created State Infrastructure Bank. Two local jurisdiction projects funded. No money left for other projects.	Source of funds for capitalization. Project Eligibilities No additional federal participation without modification of FED SIB authorization.			
Grant Anticipation Revenue Vehicles (GARVEE) Bonds	Allows states to pledge future federal funds for debt service and allows federal funds to be used for debt serve and financing costs.	Can be used for non-revenue projects. WSDOT proposes to use for Hood Canal Bridge in 03-05 Over 1 billion issued nationally.	How much of federal funding resources should be used for pay as you go vs. encumbering future federal dollars.			

REVENUE GENERATION IDEAS						
NAME	**DESCRIPTION**	**REVENUE POTENTIALS**	**SOME ISSUES**	**Political Feasibility (1= low 5= high**	**Admin Feasibility 1= hard 5= easy**	**Public Acceptance 1=less 5= more**
HOT Lanes (SR 91 and I-15 in California)	Allow SOV drivers to pay for underutilized space in the HOV lane system or in a specific corridor (I-5; I-90, I-405)	Revenue potential relies upon system performance and pricing. Application system wide and certain rates could produce substantial revenues	Perceived vs. real equity issues Can you increase transit alternatives enough? Is there enough HOV System Capacity to sell? Can you raise enough revenues for more than operations costs? What do you do with the money?			
Strategies/Experiments to test pricing acceptance and elasticity (e.g. Value Pass)	e.g. Auction a limited number of temporary permits to drive in the HOV lane. Use the money to fund pricing implementation	$2 million year net for example	Authorize experimental program Set up test/evaluation method			
Tax Increment Financing with Property Tax (RCW 39.89)	Allow public facilities to be formed within a defined area and allow future incremental property tax values to be used for debt financing.	Maximum $4,400 year for each $1 million increase in assessed value. This will service a $55,000 loan at 5% over 20 years.	75% of local taxing districts including fire districts must approve the use of property TIF			

NAME	DESCRIPTION	REVENUE POTENTIALS	SOME ISSUES	Political Feasibility 1= low 5= high	Admin Feasibility 1= hard 5= easy	Public Acceptance 1=less 5= more
Tax Increment Financing With Sales/Use Tax	Same concept of property tax but future incremental state sales tax revenues may be used for debt financing.	Tied to the volatility of the sales tax, which makes revenue stream difficult to predict. Other backstops to debt financing would be required.	Decrease in potential general fund revenues. Concerns about commitment of future revenues for other projects/services at local level.			
Highway Impact and Later Comer Fees (SR 125 California & Colorado E-470	Authorize DOT to collect impact fees from businesses that generate significant traffic on state highways.	Pricing schemes could be created to invoke certain desirable behaviors to maximize the system: (E.g. A 10,000 employee center would get credits for bus riders telecommuters. UPS would get a price break for deliveries made after 9 a.m and before 3 pm.	Further burdens the sagging business economy of the state Encourages employers to provide commute trip reduction programs; move goods and services in not peak hours. Competes for impact fees from local jurisdictions to some degree.			
VMT Charge	Charge motorists a user charge for the miles traveled.	Unlimited	Share with Locals Ability to Collect Way to tax alternative fuel use of system			
Sales Tax Exemption for Road and Highway Construction Projects	Allows for Sales Tax to be exempt for State Highway Construction Projects so that transportation funds will go further	St. Highways $18 million a year. Local Roads $19 million a year.	Reduces revenues to the General Fund			

Worksheet for TIFA Committee Discussion
11/12/2002

NAME	DESCRIPTION	REVENUE POTENTIALS	SOME ISSUES	Political Feasibility 1= low 5= high	Admin Feasibility 1= hard 5= easy	Public Acceptance 1=less 5= more
Tax Credits to Private Developers	Provide state tax credits to private developers who upfront fund interchanges etc.	$30 million an interchange	Reduces revenues to General Fund			
Gas Tax Earmark (Super Cat C Type)	Provides a dedicated funding source for selected projects	1 cent supports a $400 million bond issue	Project Selection			
Sales Tax on Gas	6.5% sales tax on gas	Averages $362 million a year	Adds to high state sales tax rate			

Worksheet for TIFA Committee Discussion
11/12/2002

INFRASTRUCTURE – HOW TO PAY FOR IT

PUBLIC SECTOR DEBT FINANCING

November 7, 2002

Presented By:

Hugh D. Spitzer*
Foster Pepper & Shefelman PLLC
1111 Third Avenue, Suite 3400
Seattle, Washington 98101
(206) 447-4400
E-Mail: spitz@foster.com

* Portions of this paper were written by Jeff Navé and Lee Voorhees of Foster Pepper & Shefelman PLLC.

Traditional Bond Financing of Public Improvements

Ability to Issue "Tax-Exempt" Bonds

A local government's authority to borrow money and issue bonds is set forth in state law. The exemption of interest on such obligations for federal income tax purposes is set forth in federal law. Even though a local government may be able to finance an improvement, there is no guaranty that it may do so on a "tax-exempt" basis. The following rules, among others, generally must be satisfied if interest paid on government obligations is to be exempt from federal income taxes:

- the local government must reasonably expect that all proceeds of the financing, together with investment earnings thereon earned prior to the completion of the project, will have been expended within three years to pay costs of the project (Treas. Reg. § 1.148-2(e)(2)(i));
- the weighted average maturity of any obligations issued must not exceed 120 percent of the weighted average reasonably expected economic life of the improvement financed (Treas. Reg. §§ 1.148-1(c)(4)(B)(2), 1.148-10(a)(4));
- if proceeds are not spent diligently during the allowable three-year construction period, certain investment earnings must be rebated to the federal government (26 U. S. C. § 148(f));
- unless certain exceptions apply, no more than ten percent of the bond proceeds or the bond-financed improvements can be used in any activity carried on by any person other than a state or local governmental unit (26 U.S. C. § 141(b)); and
- no more than the lesser of five percent of the proceeds or $5,000,000 can be loaned to persons other than a state or local governmental unit (26 U.S.C. § 141(c)).

If an improvement cannot be financed or operated within the constraints of the foregoing federal tax laws, the local government can finance the improvement on a "taxable" basis. The interest costs on a taxable borrowing would be greater than those on a tax-exempt borrowing.

Revenue Bonds

What are they?	Bonds that are payable solely from the revenue generated by an income-producing facility
Who can issue revenue bonds?	Most local governments
How can they aid real estate development	Revenue bonds are most often issued to finance utility improvements, such as water and sewer infrastructure. They can be issued to defray the costs of installing such improvements within a development.
What are the "pros" of revenue bonds	Not subject to voter approval requirements; therefore, can be issued quickly Not subject to constitutional and statutory debt limits Payable solely from pledged revenues Allocate costs of infrastructure to users
What are the "cons" of revenue bonds	Burdensome covenants Rate and coverage covenants Future parity lien bond limitations Not as secure as general obligation bonds Reserve requirements Issues regarding equitable rate structures

Compliance with legal procedures required

"[W]here a person or board is charged by law with a specific duty and the means for its performance are appointed by law, there is no room for implied powers, and the means appointed must be followed, however inadequate may be the result." [Emphasis in original.]

State ex. rel Eastvold v. Maybury, 49 Wn.2d 533, 539, 304 P.2d 663 (1956).

Special benefits versus general public benefits

"The theory upon which general taxation proceeds is entirely distinct from that of local assessments. General taxation is sought to be enforced against all classes of property upon an ad valorem basis, while local assessments are limited to real property within a given district, and are based entirely upon the theory of special benefit by which the value of property is enhanced in excess of the general good. General taxation is enforced to serve the necessary purposes of government, while local assessments are enforced to serve mere local convenience, and for the additional benefit of private property holders."

McMillan v. Tacoma, 26 Wash. 358, 361, 67 P. 68 (1901).

Amount of assessment limited to benefits

May not exceed special benefit to a parcel.

"Under the local improvement district statutes, only that portion of the cost of the local improvement which is of special benefit to the property can be levied against the property.

. . . Property not benefited by local improvement may not be assessed, and special assessments for special benefits cannot substantially exceed the amount of the special benefits.

. . . The amount of the special benefits attaching to the property, by reason of the local improvements, is the difference between the fair market value of the property immediately after the special benefits have attached, and the fair market value of the property before the benefits have attached." (Emphasis in original.)

In re Schmitz, 44 Wn.2d 429, 433-34, 268 P.2d 436 (1954).

Assessments must be proportionate to other assessments

"The method utilized is to assess each parcel of land within the district as nearly as reasonably practicable in accordance with the special benefits gained by that parcel from the entire improvement, and to assess each parcel its proportionate share in relation to other parcels throughout the improvement district. As phrased by Professor Trautman in his article 'Assessments in Washington' 40 Wash. L. Rev. 100, 120, 'The questions are: to what extent is the particular tract benefited by the entire improvement, and is the particular tract assessed proportionally with the other property included within the improvement district.'" (Emphasis in original.)

Sterling Realty Co. v. Bellevue, 68 Wn.2d 760, 765, 415 P.2d 627 (1966).

Caveats

LIDs and ULIDs can be effective tools, but the relevant statutes are complex and the procedures can be daunting. Attention to detail is a must!

Tax Increment Financing

The Law:

Chapter 212, Laws of 2001 (generally codified in chapter 39.89 RCW), as amended by Chapter 12, Laws of 2002.

Chapter 39.88 RCW, the prior TIF statutory scheme, was ruled unconstitutional in Spokane v. Leonard (1995) on the grounds it diverted tax revenue intended to support the common schools. (The voters rejected attempts in 1973, 1982 and 1985 to amend the Washington Constitution and authorize tax increment financing.)

Who can initiate TIF projects?

Cities; counties; and port districts.

Which local governments are authorized to participate in TIF projects?

Rural county library districts; intercounty rural library districts; metropolitan park districts; counties; park and recreation service areas; park and recreation districts; road districts; fire protection districts; port districts; public utility districts; cultural arts, stadium and convention center districts; cemetery districts; public hospital districts; and flood control zone districts.

What is TIF?

Designated "community revitalization financing" in the Washington statutes—but commonly known as "tax increment financing"—TIF generally refers to a financing mechanism that allows a local government to "trap" increased property tax revenue resulting from the growth of assessed value within an increment area. This tax revenue services debt issued to finance public improvements that spur private development within the increment area.

Unlike other tax increment laws around the Country, Washington's TIF laws do not authorize the issuance of special revenue bonds. Rather, such laws merely provide an additional source of revenue (i.e. a portion of the regular taxes levied by other taxing districts) to apply toward debt service on the issuer's general indebtedness.

What is an "increment area"?

An "increment area" is a geographic area within the city, county or port district that creates the increment area. In this sense, increment areas are similar to local improvement districts.

How are increment areas created?

By the adoption of an ordinance (in the case of cities) or a resolution (in the case of counties and port districts) after a public hearing is held regarding the proposed financing of the public improvement. Unlike laws relating to local improvement districts, the TIF laws do not: (i) require that notice be mailed to property owners within the proposed increment area; (ii) establish protest procedures; or (iii) limit the authority to create an increment area if protests are made at the hearing.

What taxes are subject to TIF allocation?

"Regular property taxes," which are defined for TIF purposes to mean property tax levies that (i) are subject to the aggregate limitation set forth in RCW 84.52.043 (i.e. the "$5.90 per $1,000 assessed value" limitation) and 84.52.050 (i.e. the "one percent" limitation), or (ii) are levied by a port district or a public utility district.

What taxes are excluded from TIF allocation?

Regular property taxes levied by the State for the support of the common schools;

Regular property taxes levied by a port district or a public utility district, to the extent the port district or public utility district specifies (e.g. in the resolution submitting the levy request to the county assessor) that the tax receipts will be used to make required debt service payments on general indebtedness;

Voter-approved regular property tax levies to fund emergency medical services;

Regular property taxes levied by counties under RCW 84.34.230 to fund the acquisition of open space and conservation futures;

Voter-approved regular property tax levies by counties, cities and towns to fund affordable housing for low-income households; and

Certain voter-approved regular property taxes levied by metropolitan park districts.

What is the maximum levy rate subject to TIF allocation?

The maximum levy rate subject to allocation under chapter 39.98 RCW is $7.70 per $1,000 of assessed value of taxable property. However, it is highly unlikely that regular property taxes within an increment area would be levied at such an aggregate rate. Under existing laws, this can only occur if: (i) the aggregate levy rate within the increment area for all taxing districts subject to RCW 84.52.043 is $5.90 per $1,000 of assessed value; (ii) a port district is levying regular property taxes within the increment area for general purposes, dredging purposes and industrial development purposes (e.g. for an aggregate levy rate of $1.35 per $1,000 of assessed value); (iii) a public utility district is levying regular property taxes within the increment area (e.g. for an aggregate levy rate of $0.45 per $1,000 of assessed value); and (iv) neither the port district nor the public utility district has specified that the receipts from such tax levies will be used to pay debt service on general indebtedness.

When are tax allocation revenues first distributed?

During the year after the increment area is created.

When does the tax allocation process terminate?

The TIF tax distribution scheme terminates when tax allocation revenues are no longer necessary or obligated to pay the costs of the public improvements. Because the "sunset" provision was removed from the TIF laws in 2002, a tax allocation program can be extended for an indefinite period of time. Other taxing districts may require a specific terminate date in the written agreements required by the TIF laws.

Can members of the public halt the TIF creation process?

Yes, but in a very limited way. A member of the public can challenge the validity of the TIF statutes or the formation process. However, any such challenge must be commenced within 30 days after notice is published regarding the creation of the increment area.

Can other local governments halt the TIF creation process?

Yes. Fire protection districts have ultimate "veto" power over the creation of the increment areas. A fire protection district must agree to participate in the TIF project for the project to proceed.

In addition, taxing districts that levy at least 75% of the regular property tax within the increment area must approve the TIF project by means of a written agreement. A TIF project cannot proceed without this agreement.

What risks are unique to local governments issuing TIF bonds?

The entity creating an increment area will receive no tax allocation revenues if the assessed value of the increment area declines below its original amount, or if a court determines the TIF is unconstitutional.

Washington's newest TIF laws have not been tested in court. While they appear to address many of the shortcomings of the prior laws, there can be no guarantee the new laws are constitutional.

TIF bonds are payable from tax revenues. As a result, such bonds are treated as "general indebtedness" under the TIF laws. This is consistent with court decisions construing the Washington Constitution. Although "nonpublic participants" in TIF financings may be required to provide "adequate security to protect the public investment" in the increment area, the issuer's general fund ultimately may be at risk to the extent tax allocation revenues are insufficient to pay debt service on TIF bonds.

Because TIF bonds will be a "general indebtedness," such bonds will count against an issuer's constitutional and statutory debt limits.

Other Financing Sources and Techniques

Current budget or funded depreciation

Excess levies

Regular levy lid lifts

Grants

State tax sharing arrangements